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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,360	01/13/2005	Heiko Rieck	CS-8305/LeA 35,900	7396

34469 7590 05/02/2006

BAYER CROPSCIENCE LP  
Patent Department  
100 BAYER ROAD  
PITTSBURGH, PA 15205-9741

EXAMINER
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KUMAR, SHAILENDRA

ART UNIT	PAPER NUMBER
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1621

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/505,360	RIECK ET AL.	
	Examiner	Art Unit	
	SHAILENDRA -. KUMAR	1621	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 54-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 54-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/19/06 has been entered.

Claims 54-79 are pending in this application.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 54-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over combined teachings of Eicken et al (US 5,589,493) and JP 2001-302605.

US'493, teach structurally similar compounds, composition and method of treatment as claimed herein, see for example line 54 in column 30 through line 46 in column 31, also see columns 33-36 for various microorganism and compositions. The difference between the reference and herein claimed compounds is that in herein, n can be 2 or 3, as against n is always 1 in the reference.

JP'605, teach structurally similar compounds and composition wherein m, which

corresponds to n herein, can be 2 or 3. Note various microorganisms disclosed on page 10, columns 17 and 18. Use of surfactants or extender is well known in the art to combat microorganism along with the known antimicrobial agents.

It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to modify US'493, by including 2 or 3 substituents on phenyl ring, as taught by JP'605, because JP'605, expressly teach that phenyl ring can have multiple substituents, with the reasonable expectation of achieving a successful composition for treating fungicide, absent evidence to the contrary.

Applicants' arguments were fully considered and were not found convincing. Applicants agree that the reference compounds are structurally similar to those claimed herein. Applicants also agree that Eicken et al refers to other phytopathogenic fungi at column 34, line 42, through column 35, line 6. However, applicants argue that inasmuch as the reference has Botrytis-infected plants as preferred embodiments in the reference, the intent was to clearly exclude other pathogens. The examiner respectfully disagrees. A disclosure should be considered in its entirety to what it teaches, rather than to limit to the preferred embodiments. A mere fact that the reference has pointed out to various species of pathogen, one of ordinary skill in the art would have used the compounds to treat those pathogens, absent evidence to the contrary. Applicant's citation of EP and EPO office action is of little if any probative value inasmuch as the US patent expressly teaches the pathogens. Applicants' arguments with respect to JP'605 document is unconvincing as the structure of the document is so similar to those claimed herein and the Eicken reference, it is expected that having one extra

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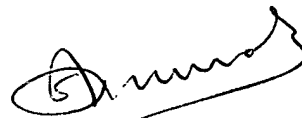
substituent on a ring will not change the property substantially, especially, when the use is similar in all the references as well as in herein.

No claim is allowed.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAILENDRA -. KUMAR whose telephone number is (571)272-0640. The examiner can normally be reached on Mon-Thur 8:00-5:30, Alt Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571)272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SHAILENDRA - KUMAR  
Primary Examiner  
Art Unit 1621

S.Kumar  
4/28/06